

IDAHO REAL ESTATE COMMISSION
MEETING MINUTES
November 29, 2007

Pursuant to notice given, the meeting of the Idaho Real Estate Commission (Commission) was held at the Public Utilities Commission in the Hearing room, 472 West Washington St., Boise, Idaho, on Thursday, November 29, 2007 at 8:30 a.m.

Commission Members Present:

Steve Kohntopp, Chair, Filer
Andy Enrico, Vice Chair, Boise
Kelly Fisher, Member, Pocatello
Pam Trees, Member, Lewiston
Comprising a quorum of the Commission

Members Absent:

Staff Present:

Jeanne Jackson-Heim, Executive Director
Craig Boyack, Chief Investigator
Sue McClintock, Education Director
Tammy Anderson, Administrative Assistant

Others Present:

Kim Coster, Commission Legal Counsel
Kevin Price, Idaho Association of REALTORS®
See attached list

Meeting was called to order at 8:35 a.m. by Commission Chair, Steve Kohntopp.

Introductions:

- a. Commissioners
- b. Staff

Approval of Meeting Minutes: Motion was made by Pam Trees to approve the October 18, 2007 Commission meeting minutes. Motion carried.

Approval of Agenda: Motion was made by Pam Trees to approve the November 29, 2007 agenda. Motion carried.

Financial Reports: Motion was made by Pam Trees to approve the October 2007, Financial Reports. Motion carried.

Salesperson and Broker Licenses Issued: Members reviewed the salesperson and broker licenses issued during the month of October 2007, a copy of which has been made part of these minutes. Motion was made by Pam Trees to approve the report. Motion carried.

License Examination Statistics

Commissioners reviewed the license exam statistics report.

Staff Reports:**Enforcement:**

The following reports were presented for members' review; copies of which are on file at the Commission office.

- **Complaint Summary Report**

Licensure:

The following reports were presented for members' review; copies of which are on file at the Commission office:

- **FY07-FY08 Analysis of Active & Inactive License Base:**
- **On-Line Renewal Reports:**

Information and Technology Reports:

Members reviewed the Information and Technology reports; copies of which are on file at the Commission Office.

Online Lottery Drawing: Andrew William "Andy" Smyth, (SP33456), from Real Estate Services, Boise, won the lottery drawing for November 29, 2007.

Commission's Counsel Report:

- **Guideline on Requirement to be Available to Present Offers:** Kim Coster presented a draft of a new Guideline defining the broker's duty to be "available." Members discussed the need for providing detailed guidance on the subject. Guideline taken under advisement.
 - **Guideline on Unilateral Cancellation:** Ms. Coster presented draft revisions to the existing Guideline of the Commission. These revisions address the rights and liabilities where the seller cancels the listing agreement. Members agreed that the Guideline should also address a broker's decision to cancel, and directed these revisions be added and reviewed next meeting.
 - **Research on Reciprocal License Issues:** Ms. Coster recalled for members the awkwardness in administering its licensing agreements with Oregon, Wyoming and Montana. She has written each of these states seeking interest in revising the agreements. Oregon plans to address the issue at the beginning of 2008, and Wyoming's Exec. Dir. indicated a willingness to work with Idaho and present the issue to that Board in December. We are awaiting response from Montana.
 - **Proposed Policy on Attorney Requests to Waive Conflicts of Interest:** Ms. Coster presented the proposed policy on Attorney Requests to Waive Conflicts of Interest. Discussion followed. A motion was made by Andy Enrico to approve the Attorney Requests to Waive Conflicts policy as it was presented. Motion carried.
 - **TIC's -SEC Notice and Request for Comment re NAR's Application for Exemption:** Ms. Coster presented a draft letter in support of the NAR's Application to exempt commercial real estate practitioners from certain registration requirements of the SEC. The exemption would allow qualified commercial brokers to advise on the real estate aspects in TIC transactions, and receive compensation for that service. The draft letter supports the Application and its definition of commercial broker. Discussion followed. A motion was made by Andy Enrico to submit a letter in support of the NAR's Application for exemption. Motion carried.
-

Idaho Association of REALTORS® Report: Kevin Price stated that there was no report at this time. Jeanne Jackson-Heim did state that she has been in touch with IAR and local Department of Finance regarding the loan fraud DVD. Both IAR and the Department of Finance are interested in collaborating with IREC on a loan fraud DVD.

Education:

- **Curriculum Realignment Workgroup Update:** Sue McClintock reported that the Workgroup has been examining the prelicense modules 1 and 2 along with the other eight stand alone modules that already exist and the process of integrating them. Once the modules are done, Mike Gamblin will test pilot both of the modules for usability. Once tested the modules will be presented to the public. Sue stated that hopefully by spring we will have a finished product.
- **BCOO Update:** The Subject Matter Experts (SME's) have been working on the BCOO course with a small group from BSU. The group decided it would be best to wait on the BCOO course and do it at the same time as the broker management course, this would move the completion date of the BCOO to May of 2008. Discussion followed.
- **Certification Policy Revisions and New Education Forms:** Sue McClintock presented revisions of the Certification Policy and Education forms. She went over highlights of forms and conveyed to the Commissioners the changes that had been made along with the Education Council's suggestions. Discussion followed: A motion was made by Andy Enrico to approve forms and Certification policy. Motion carried.
- **Applications for Education Fund Awards:** Commissioners directed Staff to add a disclaimer on the Application for Education Funds Awards form that states the money awarded is Civil Penalty Fine money. Discussion followed.

Executive Director's Report:

- **Tracking of Enforcement Phone Calls:** Craig Boyack presented a log form used to track Enforcement calls. The form focuses on the types of calls that are most common at this time and can be updated as needed. Discussion followed.
 - **Revised Due Process Letter:** Jeanne Jackson-Heim presented revisions to the Due Process Letter. There was a discussion regarding the possibility of streamlining the CE Stipulation process. Commissioners directed staff to investigate and present a proposed process at the next Commission meeting. A motion was made by Andy Enrico to approve the Due Process Letter with corrections as directed by Commissioners. Motion carried.
 - **Revision of Stipulations and Final Orders Language:** Jeanne Jackson-Heim stated that the acceleration language that was added to the Stipulations and the Final Orders will help in the process of collecting money for fines that have not been paid. A motion was made by Andy Enrico to approve revisions to Final Orders Language as presented. Motion carried.
 - **Revisions to Voluntary Surrender Agreement:** Jeanne Jackson-Heim presented revisions to the Voluntary Surrender Agreement. Discussion followed. A motion made by Andy Enrico to approve revisions to the Voluntary Surrender Agreement as presented. Motion carried.
 - **Printing of the Real Estatement:** The Real Estatement will be posted on the IREC website for this coming edition. Subscribers who would normally receive the Real Estatement via mail will be notified by postcard that the newsletter is available online only.
 - **Enforcement Issues:** Craig Boyack reported Clorissa Cintorino is a new hire as Inspector for the Enforcement Department.
-

Matters from Commissioners:

- **Request to attend ARELLO Board meeting:** Pam Trees requested budget approval for One Thousand Six Hundred Dollars (\$1600.00) to attend the ARELLO Board meeting in Orlando, Florida this coming January. A motion was made by Andy Enrico to authorize Pam Trees budget request to attend the ARELLO Board meeting in the amount of One Thousand Six Hundred Dollars (\$1600.00). Motion carried.
- **Steve Taggart Letter:** Commissioners discussed the letter from Steve Taggart that challenges Staff's decision not to pursue disciplinary against a third-party licensee for presenting an offer directly to a represented seller, without first notifying the seller's agent. Members agreed with Staff that such conduct is not prohibited by the License Law and directed Kim Coster to draft a letter in response, for review by Commissioners before sending out.
- **Broker Bulletin Regarding Trust Accounts:** Commissioners discussed the broker bulletin regarding trust accounts. Staff was directed to post on the IREC website that licensees can contact the Commission with questions regarding trust accounts.

Case of Staff vs. Michael Santopolo:

Review of Recommended Order and Oral Argument - 10:30 a.m.: Attorney Kirtlan Naylor appeared on behalf of Staff; Michael Santapolo was personally present and was represented by attorney Wyatt Johnson. Prior to argument Commissioner Kelly Fisher disclosed to both parties that he has a financial interest in his son's publishing business, and that he earlier had hired the legal services of Michael Kane to help that business obtain public records from BSU. Only later, when he received the Recommended Order, did Mr. Fisher notice that Mr. Kane was the hearing officer in this matter. Mr. Fisher felt no bias or prejudice toward Mr. Kane, that his relationship would not impact this consideration of the case. Mr. Johnson indicated his client had no concerns with Mr. Fisher's participation in the case; Mr. Naylor likewise responded he had no concerns. Oral arguments proceeded and were tape recorded.

Petition to Reinstate Shannon Durbin: The Commission reviewed Shannon Durbin's request for reinstatement of her real estate license, which license had been suspended as a result of Shannon Durbin's failure to comply with the terms of the Final Order dated March 15, 2007. Commissioner Pam Trees moved that, based upon the record showing that the Ms. Durbin has now successfully completed the classes previously ordered, and for good cause shown herein, that Shannon Durbin's request be granted; Shannon Durbin shall be entitled to have her license reinstated upon the Commission's receipt of Ms. Durbin's completed "Notice of Real Estate License Change" form. Motion carried.

Case of Staff vs. Jeffrey B. Simmons (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Andy Enrico to overrule objection to Stipulation and that the "Final Order" for disciplinary actions against Jeffrey B. Simmons be as follows:

- 1) That Jeffrey B. Simmons shall be required to pay costs and attorney fees in the amount of Five Thousand Eight Hundred Sixty Five Dollars and Ninety-Six Cents (\$5865.96), due by November 17, 2008.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Enforcement Stipulations:

Case of Staff vs. David L. Roberts (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Kelly Fisher to accept without exception the Stipulation which had been agreed to by David L. Roberts and that the "Final Order" for disciplinary actions against Mr. Roberts be as follows:

- 1) That David L. Roberts shall be issued a formal reprimand.
- 2) That David L. Roberts pay a civil fine in the amount of Five Thousand Dollars (\$5000.00) by January 6, 2008.
- 3.) That David L. Roberts license shall be suspended for a period of twelve (12) months from the date of service of the Commission's Final Order, but the term shall be suspended provided David L. Roberts complies with the terms of the Commission's Order and violates no other license law.
- 4.) That David L. Roberts successfully complete a live Real Estate Law course and a live Cracking the Code course by no later than June 6, 2008.
- 5.) That David L. Roberts pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of Three Hundred Dollars (\$300.00) by January 6, 2008.
- 6.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

CE Stipulations:

Case of Staff vs. Judy L. Ainger (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Andy Enrico to accept without exception the Stipulation which had been agreed to by Judy L. Ainger and that the "Final Order" for disciplinary actions against Ms. Ainger be as follows:

- 1) That Judy L. Ainger shall be issued a formal reprimand.
 - 2) That Judy L. Ainger pay a civil fine in the amount of One Thousand Dollars (\$1000.00) by January 6, 2008.
 - 3) That Judy L. Ainger pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of One Hundred Twenty-Five Dollars (\$125.00) by January 6, 2008.
-

4) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Mary Ann Morgan (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Andy Enrico to accept without exception the Stipulation which had been agreed to by Mary Ann Morgan and that the "Final Order" for disciplinary actions against Ms. Morgan be as follows:

- 1) That Mary Ann Morgan shall be issued a formal reprimand.
- 2) That Mary Ann Morgan pay a civil fine in the amount of Two Hundred Fifty Dollars (\$250.00) by January 6, 2008.
- 3.) That Mary Ann Morgan pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of One Hundred Twenty-Five Dollars (\$125.00) by January 6, 2008.
- 4.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Wilma L. Courtade (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Andy Enrico to accept without exception the Stipulation which had been agreed to by Wilma L. Courtade and that the "Final Order" for disciplinary actions against Ms. Courtade be as follows:

- 1) That Wilma L. Courtade shall be issued a formal reprimand.
 - 2) That Wilma L. Courtade pay a civil fine in the amount of Five Hundred Dollars (\$500.00) by January 6, 2008.
 - 3.) That Wilma L. Courtade pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of One Hundred Twenty-Five Dollars (\$125.00) by January 6, 2008.
-

4.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Reed K. Wilson (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Andy Enrico to accept without exception the Stipulation which had been agreed to by Reed K. Wilson and that the "Final Order" for disciplinary actions against Mr. Wilson be as follows:

- 1) That Reed K. Wilson shall be issued a formal reprimand.
- 2) That Reed K. Wilson pay a civil fine in the amount of Five Hundred Dollars (\$500.00) by February 6, 2008.
- 3.) That Reed K. Wilson pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of One Hundred Twenty-Five Dollars (\$125.00) by January 6, 2008.
- 4.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Julie A. Iffla (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Andy Enrico to accept without exception the Stipulation which had been agreed to by Julie A. Iffla and that the "Final Order" for disciplinary actions against Ms. Iffla be as follows:

- 1) That Julie A. Iffla shall be issued a formal reprimand.
 - 2) That Julie A. Iffla pay a civil fine in the amount of Two Hundred Fifty Dollars (\$250.00) by January 6, 2008.
 - 3.) That Julie A. Iffla pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of One Hundred Twenty-Five Dollars (\$125.00) by January 6, 2008.
-

4.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Case of Staff vs. Dennis S. Lukecart (Ex-Parte). In consideration of the facts and evidence presented, motion was made by Andy Enrico to accept without exception the Stipulation which had been agreed to by Dennis S. Lukecart and that the "Final Order" for disciplinary actions against Mr. Lukecart be as follows:

- 1) That Dennis S. Lukecart shall be issued a formal reprimand.
- 2) That Dennis S. Lukecart pay a civil fine in the amount of Five Hundred Dollars (\$500.00), in two equal payments of Two Hundred Fifty Dollars (\$250.00) with the first payment due by January 6, 2008 and the second payment due by February 6, 2008.
- 3.) That Dennis S. Lukecart pay the cost and attorney's fees incurred in the investigation/prosecution of this matter in the amount of One Hundred Twenty-Five Dollars (\$125.00) by January 6, 2008.
- 4.) That the Commission shall be entitled, without further notice or action otherwise required by Idaho Code or IDAPA rules, to immediately suspend Respondent's license in the event the Respondent fails to timely comply with any term or condition of the Final Order. Notice of such action sent to the most current address provided by the Respondent to Staff shall be deemed sufficient. Any license suspension may be reinstated upon petition to the Commissioners after compliance of the Stipulation term or condition.

Motion carried. A copy of the "Final Order" is attached hereto and made a part of these minutes.

Executive Session: In accordance with section 67-2345 (1)(d) & (f), Idaho Code, a motion was made by Kelly Fisher to adjourn to executive session to review probable cause memoranda submitted pursuant to Section 54-2058(1), Idaho Code. Motion carried. Members reviewed probable cause memorandum.

Regular Session: There being no further purpose for an executive session, a motion was made by Andy Enrico to adjourn the executive session. Motion carried.

Probable Cause Memo # 07-32700, 07-32701: A motion was made by Andy Enrico finding that the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Motion carried.

Probable Cause Memo # 07-36700: A motion was made by Kelly Fisher finding that the facts set forth in the memorandum of probable cause provided to them by the Executive Director, pursuant to Section 54-2058(1), are sufficient to proceed with formal action on the violations presented. Commission staff is authorized to file an administrative complaint. Motion carried.

Special Considerations & Felony Exemptions:

In accordance with section 67-2345 (1)(d) & (f), Idaho Code, a motion was made by Kelly Fisher to adjourn to executive session to review special request licensure files and requests for felony exemption submitted pursuant to Section 54-2058(1), Idaho Code. Motion carried. Members reviewed exempt records submitted by petitioners in support of the requests for special consideration and felony exemptions.

Regular Session: There being no further purpose for an executive session, a motion was made by Andy Enrico to adjourn the executive session. Motion carried.

Special Consideration #07-045 - Exemption for Review 54-2012(2)(a). Following discussion and review of the documents submitted, motion was made by Kelly Fisher to approve the request for felony exemption. Motion carried.

Special Consideration #07-046 - Exemption for Review 54-2012(2)(a). Following discussion and review of the documents submitted, motion was made by Andy Enrico to deny request, supplemental information is needed for reconsideration of the request for felony exemption. Motion carried.

Executive Session: In accordance with section 67-2345 (1)(d) & (f), Idaho Code, a motion was made by Kelly Fisher to adjourn to executive session to review special request licensure submitted pursuant to Section 54-2022(2) & (6), Idaho Code. Motion carried.

Regular Session: There being no further purpose for an executive session, a motion was made by Andy Enrico to adjourn the executive session. Motion carried.

Petition for Review #08- 015 – Request to Waive certain Salesperson Prelicense Education Requirements 54-2022(1)(b) and 54-2022(2)(6): Following discussion and review of the documents submitted, a motion was made by Kelly Fisher to partially grant the request, and to waive the Module 1. The applicant may waive the attendance requirements of Module 2 but must pass the final exam. Motion carried.

Education Funds Awards Application 08-021: Following discussion and review of the documents submitted a motion was made by Andy Enrico to approve as submitted the Application for Award funds. Motion carried.

Education Funds Awards Application 08-022: Following discussion and review of the documents submitted a motion was made by Andy Enrico to approve application for Award funds, upon the applicant's submission of a budget, and with the added requirement that course be advertised as "open to all licensees." Motion carried.

Education Funds Awards Application 08-023: Following discussion and review of the documents submitted a motion was made by Pam Trees to award up to One Thousand Five Hundred Dollars (\$1500.00) of the funds applied for. Kelly Fisher and Andy Enrico opposed. Motion Failed. A motion was made by Kelly Fisher to award One Thousand Two Hundred Dollars (\$1200.00), subject to no limit on attendance. Motion carried.

Education Funds Awards Application 08-024: Following discussion and review of the documents submitted a motion was made by Pam Trees to approve Award for application in the amount of One Thousand Dollars (\$1000.00), subject to no limit on attendance. Motion carried.

Executive Session: In accordance with section 67-2345 (1)(f), Idaho Code, a motion was made by Kelly Fisher to adjourn to executive session to obtain advice of legal counsel concerning its review of the Recommended Order in Staff vs. Michael Santopolo. Motion carried.

Regular Session: There being no further purpose for an executive session, a motion was made by Kelly Fisher to adjourn the executive session. Motion carried.

Staff vs. Michael Santopolo – Review of Recommended Order, a motion was made by Andy Enrico to continue this matter at the next Commission meeting in January. Motion carried.

There being no further business, motion was made by Steve Kohntopp to adjourn the meeting at 4:51 p.m. Motion carried.

Respectfully Submitted,




Jeanne Jackson-Heim
Executive Director

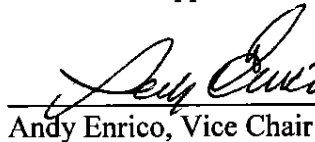
JJH: tla

Attachments: Licenses Issued October 2007
FY07-FY08 Analysis of Active & Inactive License Base
Online License Reports
Complaint Summary Report
October 2007, Financial Reports
Information and Technology Reports

"Final Order" – Michael, Santopolo
"Final Order" – Shannon Durbin
"Final Order" – Jeffrey B. Simmons
"Final Order" – Judy L. Ainger
"Final Order" – David L. Roberts
"Final Order" – Mary Ann. Morgan
"Final Order" – Wilma L. Courtade
"Final Order" – Reed K. Wilson
"Final Order" – Julie A. Iffla
"Final Order" – Dennis S. Lukehart

**Minutes of the Idaho Real Estate Commission meeting in Boise, Idaho on November 29, 2007,
are hereby approved.**


Steve Kohnstopp, Chair


Andy Enrico, Vice Chair


Kelly Fisher, Member


Pamela Trees, Member